Patrick H. Merrick, Esq.
Director – Regulatory Affairs
AT&T Federal Government Affairs

Suite 1000
1120 20th Street NW
Washington DC 20036
202 457 3815
FAX 202 457 3110

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Ms. Anita Cheng
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket 98-171; Telecommunications Services for Individuals with Hearing Speech Disabilities and the Americans with Disabilities Act of 1990, CC Docket No. 90-571; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72; Number Resource Optimization, CC Docket No. 99-200; and Telephone Number Portability, CC Docket No. 95-116.

Dear Ms. Cheng;

AT&T Corp. ("AT&T") submits this ex parte letter to address more fully how the Commission could implement a per-line, flat rate assessment and recovery mechanism for the universal service program.

First, a per-line, flat rate assessment and recovery mechanism is fully consistent with Section 254(d) of the Telecommunications Act. Section 254(d) states that "[e]very telecommunications carrier that provides interstate service shall contribute, on an equitable and nondiscriminatory basis," to the mechanisms the Commission establishes to support universal service. Under AT&T's preferred approach (as is described in AT&T's comments and reply comments), each interstate carrier with a facility and/or UNE based local relationship with an end-user customer would act as the "collection agent" for universal service contributions on behalf of *all* carriers providing service over that customer's line, thereby ensuring consistency with the statutory language. Each *line* would carry with it the same prescribed assessment, which carriers would be required to pass through, and each carrier would remit to the USF only what it collected. Under this system, the universal service charge would become truly exogenous and competitively neutral.

In other words, the Commission should establish a prescribed, uniform assessment for each line, and a portion of that uniform assessment would be attributed to each interstate carrier serving that line. The statute, however, does not require the Commission to force each carrier to bill the end-user separately for its portion of the assessment; for purposes of administrative efficiency, the Commission can designate either the LEC or the IXC to bill the entire contribution on behalf of both. Indeed, because carriers' end-user customers ultimately pay for USF contributions, assessing each end-user line ensures the broadest, most equitable assessment and recovery mechanism. Clearly, the LECs are in the *best* position to recover the contribution amounts at least cost because they already have the billing information within their systems. Moreover, making LECs responsible for recovery would permit the Commission to capture dial-around and prepaid card services in the universal service system because all such services are provided over a "line."

Thus, designating the LECs to bill the entire universal service charge on behalf of themselves and the interexchange carriers is fully consistent with the Act. *See, e.g.,* Ad Hoc at 29-31; Sprint at 10; *accord* AT&T at 14. Under that approach, each interstate carrier providing service over a line shares an assessment for that line. Assuming a $1.00 per-line assessment, if a LEC is both the local and presubscribed interexchange carrier for a residential line (or there is no presubscribed IXC), the LEC would be assessed $1.00, and would bill the end-user $1.00. If a LEC is the local provider and an unaffiliated presubscribed IXC provides long distance service, the two carriers would be assessed a total of $1.00, with the LEC billing the end-user $1.00 on behalf of both carriers.

Some commenters have claimed that the Commission lacks legal authority to adopt a per-line assessment because of *Texas Office of Public Utility Counsel* v. *FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC*"), which held that Section 254 did not provide an unambiguous grant of authority to assess intrastate revenues in the context of a revenue-based assessment scheme. *See, e.g.,* BellSouth at 3; USTA at 5; Verizon at 2-4. *TOPUC* is inapplicable because an assessment that applies only to lines providing interstate telecommunications cannot conceivably be deemed a "charge . . . in connection with intrastate communications service," and therefore such an assessment would not run afoul of Section 2(b).[1] Indeed, a federal, per-line universal service meachanism, assessed only on interstate lines, would no more constitute a "charge" in connection with intrastate service than does the SLC. The Fifth Circuit itself noted that "the text of the statute does not impose any limitation on how universal service will be funded." *TOPUC*, 183 F.3d at 447. An assessment method is foreclosed only if it can be shown that it constitutes a "charge" in connection with intrastate service under Section 2(b) – which a per-line assessment does not.

Moving to a flat-rate assessment and recovery mechanism is necessary to maintain equity and competitive neutrality in the face of prevailing trends in telecommunications pricing. Trends in telecommunications markets are rapidly undermining the viability of the Commission's original, revenue-based assessment method. *See* Ad Hoc at 7-26; AT&T at 11-14; Sprint at 4-6; WorldCom at 12-15. Carriers now bundle services together and offer flat-rate packages that include both interstate and intrastate telecommunications and non-telecommunications products and services, and wireless carriers have significantly expanded and now provide customers with

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[1] This conclusion is reinforced by the Fifth Circuit's reasoning in *TOPUC*. As the Court explained, inclusion of intrastate revenues in the assessment base "could certainly affect carriers' business decisions on how much intrastate service to provide or what kind it can afford to provide," and would thus permit the FCC to exercise prohibited "influence" over intrastate services. *TOPUC*, 183 F.3d at 447 n.101. Under a flat-rated assessment on lines capable of providing interstate services, however, a carrier's provision of intrastate service is irrelevant; the only "business decisions" affected would be those relating to provision of interstate lines. *See also Celpage, Inc.* v. *FCC,* Nos. 99-1072, 99-1244 and 99-1249, Brief for the Federal Communications Commission in Opposition at 29 (S.Ct. March 2000) (suggesting that, in the FCC's view, *TOPUC* may not even prohibit the FCC from including intrastate revenues in the assessment base for the high cost fund).

interstate services as part of a flat-rated package. *See* NPRM ¶ 3. Any proposed method of identifying interstate telecommunications revenues within a bundled package is arbitrary and administratively unworkable. Maintaining the revenue-based approach will increasingly place the Commission in the role of "rate police," passing judgment on the inherently arbitrary process of choosing the proper analogue for interstate telecommunications services within a bundle. *See* AT&T at 12; WorldCom at 18-20.

In addition, the complex patchwork of "safe harbors" introduces additional competitive inequities into the universal service system. *See, e.g.,* AT&T at 11-13; WorldCom at 13-15. A flat-rate system would eliminate the need for a "safe harbor" for wireless carriers, which is particularly important given that the existing safe harbor significantly understates the amount of interstate revenues earned by wireless carriers, thereby unfairly shifting the burden of universal service to wireline carriers. *See* AT&T at 13; Nextel at 11; WorldCom at 12-15.

A flat-rate universal service assessment and contribution mechanism would allow the Commission to eliminate the arbitrary "international exemption" that effectively reduces telecommunications providers' incentives to increase their interstate service offerings. *See*, *e.g.,* AT&T at 13; Telstar at 2-5; WorldCom at 12-15. The prescribed flat-rate assessment would also render the "*de minimis*" exception unnecessary and thereby expand the universal service contribution base to include all interstate telecommunications providers. *See*, *e.g.,* AT&T at 13; Iowa Utilities Board at 3; Telstar at 9.

The decline in overall interstate telecommunications revenues is also undermining the revenue-based approach, particularly because funds required for universal service support programs are expanding. *See, e.g.,* Telstar at 7; WorldCom at 9-12. As WorldCom (at 11) explained, "in a world of declining interexchange carrier revenues the current system inevitably will lead to a USF 'death spiral,' where increasing universal service demands chase fewer interstate dollars." *See also* Telstar at 7. AT&T agrees that the precipitous decline in pricing for voice long distance services and private line data services, coupled with an ever-increasing demand for universal service funding, will send a revenue-based assessment factor to unpalatable heights and make the collection base unstable. Thus, the need for universal service reform is critical if the universal service system is to be effective in the future.

Under the AT&T proposal, carriers would be assessed USF for each switched access line (wireline) or telephone number (wireless) they served. Wireline cariers would contribute to USF per switched access line or UNE-based switched access line. A switched access line is the facility that connects the end user's telephone to the central office and that jointly provides exchange and interexchange service, such that a federal End-User Common Line charge or the equivalent is applied. Wireless carriers would contribute to USF for each subscriber that has a commercial telephone number for that subscriber.

Sincerely,

cc:	Ken Lynch	Paul Garnett	Linda Miller
	Robert Haga	Geoff Waldau	
	Jim Lande	Jack Zinman	